



**CITY OF ROCKVILLE
DEPARTMENT OF COMMUNITY PLANNING & DEVELOPMENT
SERVICES
STAFF REPORT**

TO: Planning Commission

VIA: Jim Wasilak, Chief of Planning

FROM: Joe Thompson, Planner II

DATE: November 18, 2009

SUBJECT: Zoning Text Amendment TXT2010-00224

REQUEST: The proposed Zoning Text Amendment (ZTA) will amend Subsection 25.17.01 b. (Public Use Space, General Requirements). In addition, the ZTA will add three new subsections to Section 25.17.01. The purpose of the amendment is to further refine the general requirements for public use space and to recalibrate the public use space requirement for development expansions exceeding 50 percent of the existing gross floor area, or 50 percent of the net lot area. The proposed amendments will grant the City greater flexibility in administering the public use space requirement.

PREVIOUS RELATED ACTIONS: On October 12, 2009, the Mayor and Council unanimously voted to authorize the subject ZTA. Since authorization and application filing staff is recommending additional revisions.

BACKGROUND:

The public use space requirement and the related fee in lieu alternative appeared in early drafts of the Zoning Ordinance. The Zoning Ordinance requires all new development in Mixed-Use Zones to provide a minimum of 20 percent public use space. This is not just open space or green space – public use space must be

accessible for use and enjoyment by the public. It was recognized that there would be instances where providing the public use space on-site might not be feasible, especially in the case of small lots where taking out 20 percent of the lot area would be a substantial burden. There may also be situations where there is a nearby park that the City would like to improve as an alternative to having public use space on the proposed development site. The fee in lieu of public use space provision was included to address this issue. The fee was also discussed as a means to enhance the boulevard concept should Rockville Pike be redesigned.

The Zoning Ordinance requires the Mayor and Council to set the fee in lieu via resolution. Staff provided the Mayor and Council with a recommended method for calculating the fee at their October 12 meeting and recommended that this item be the subject of a public hearing. The focus of this amendment is to address new development and substantial redevelopment within the City. In the case of sites already developed, application of the new Zoning Ordinance standards for additions or expansions of development on existing sites can cause hardships. An example of this hardship can be demonstrated in the current public use space requirement as it relates to additions or expansions of existing development.

Article 8 of the Zoning Ordinance addresses the issue of nonconformities and development actions on sites with existing development. In essence, any development activity that affects more than 50 percent of the existing floor area, or 50 percent of the net lot area, requires compliance with the new development standards. The proposed ZTA is intended to mitigate the impact of the public use space requirement on additions or expansions to existing development that exceeds 50 percent of the existing gross floor area or 50 percent of net lot area. The ZTA also proposes to focus the public use space requirement more on development that includes residential, retail and commercial uses, while easing the requirement for primarily office and industrial developments that normally do not have a large public draw.

ANAYLSIS: Subsection 25.17.01 b. currently reads as follows:

General Requirements – Where provided, such space must be accessible for use and enjoyment by the general public, and may include space so located and treated as to enhance the amenity of the development by providing landscaping features or a general appearance of openness. The Approving Authority may allow reasonable limitations on access to the public use space to meet safety or security concerns.

Proposed amendments to the Subsection 25.17.01. b. are indicated as follows:

New text is double underlined. New text that was proposed in the filed ZTA, but has since been deleted is ~~[[struck through in bold double brackets]]~~. Deleted text is ~~struck through~~.

General Requirements – Where provided, such public use space must be accessible for use and enjoyment by the general public when provided in a residential, retail, or mixed-use development project. Development projects consisting primarily of office and/or industrial uses may provide an Open Area, as defined in Article 3, for the purpose of satisfying the public use space requirement. ~~and may include space so located and treated as to enhance the amenity of the development by providing landscaping features, screening or a general appearance of openness. The Approving Authority may allow reasonable limitations on access to the public use space to meet safety or security concerns. [[Development consisting primarily of office and/or industrial uses may include space accessible to the public or the employees on site for the purpose of satisfying the public use space requirement.]]~~

As adopted, the public use space requirement does not differentiate between different development types. After eight months of administering the new Zoning Ordinance, staff is beginning to recognize that a strict application of the public use space requirement (across all development projects) will have unintended consequences, including, but not limited to, impractical applications of public use space in development projects where the general public does not normally congregate. The revision to the submitted text essentially moves the new language from the end of the paragraph to follow the new language near the beginning. Reference is made to the definition of “Open Area,” which defines the character of the space for primarily office and/or industrial development projects.

In order to grant flexibility to development projects consisting primarily of office and/or industrial uses, staff proposes to allow those development types the ability to provide an “open area” for the purpose of satisfying the public use space requirement. As defined in Article 3 of the Zoning Ordinance, an open area “shall, in general, be available for entry and use by the occupants of the building[s] involved...” An open area is distinctly different from public use space in so far as it is not required to be “accessible for use and enjoyment to the general public...”

As a substitute to providing public use space, the requirement of an open area still ensures the application of quality open space since an open area, by definition, cannot include "parking lots or vehicular surfaces, accessory buildings other than swimming pools, or areas of open space located or so small or so circumscribed by buildings, parking, or drainage areas as to have no substantial value..." The intent is to create a flexible alternative to public use space that allows certain development projects the ability to provide quality open areas designed for use and enjoyment by the employees and/or occupants of the building(s) on site.

Proposed additions of three new subsections, e.g., 25.17.01. b. 1., 25.17.01. b. 1 (a), 25.17.01. b. 1. (b), to Section 25.17.01, are indicated as follows:

New text is double underlined.

1. Where development does not comply with the public use space requirement, the following regulations apply:
 - (a) Building expansions that exceed 50 percent and up to 100 percent of the existing gross floor area must provide a proportionate amount of public use space on site using a factor of 0.2 times the percentage increase in gross floor area up to the required 20 percent public use space requirement (example: 75 percent increase in existing gross floor area x 0.2 = 15 percent public use space requirement).
 - (b) Any building expansion or cumulative addition that exceeds 100 percent of the existing gross floor area must provide public use space as set forth in subsection 25.13.05. b. 1.

Pursuant to Section 25.08.07, Certain Existing Structures or Development, the adopted Zoning Ordinance development standards apply to any development that "...cumulatively exceeds 50 percent of the existing gross floor area or 50 percent of the net lot area..." As such, any Mixed-Use zoned development projects that exceeds 50 percent of the existing gross floor area, or net lot area, must provide the full 20 percent public use space requirement. Notwithstanding that the expansion could be 51 percent or 100 percent of the existing gross floor area, the full public use space requirement applies to any expansion exceeding 50 percent.

The purpose of the proposed modification is to establish a proportionately scaled application of the public use space requirement relative to the percent increase in existing gross floor area. This proportionate scale is an alternative to the blanket provision of requiring the full 20 percent public use space for all development expansions exceeding 50 percent of the existing gross floor area or net lot area.

RECOMMENDATION: Recommend approval of the proposed Zoning Text Amendment (ZTA), as revised.

Attachments:

1. Filed Text Amendment Application TXT2010-00224